

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 202 OF 2006

Riyaz S. Gondekar & Ors. ..Petitioners

versus

Shri Dwarkanath G. Warde ..Respondent

Ms. Gauri Godse for the Petitioners.

**CORAM : DR. D.Y.CHANDRACHUD, J.
DATE : 10TH FEBRUARY, 2006**

P.C. :

1. The Trial Court had passed an order dated 21.1.2004 directing the Respondent to deposit Rs.26,950/- towards the arrears of rent for the period ending January 2004 within four months failing which the defence was liable to be struck off. The order of the learned Trial Judge also directed payment of monthly rent of Rs.350/-. On 5.9.2005 the Respondent moved an application for deposit of an amount of Rs.30,800/- for the period from September 1997 to December, 2004. Since the defence had been struck off, the trial Judge allowed

the Respondent to deposit the amount without prejudice to the rights of the parties. The Respondent moved an application on 24.6.2005 before the Trial Court for extension of time to deposit the amount and prayed that the order striking off his defence be set aside. In that application it has been stated that the Respondent initially filed an Appeal against the Order dated 21.1.2004 before the District Court but that Appeal was dismissed as not being maintainable against an order passed under Order XV-A of the Code of Civil Procedure. The Respondent stated that he had moved a Writ Petition before this Court (Writ Petition No. 3870 of 2005) in which the learned Single Judge allowed the Petition to be withdrawn with liberty to file an application for extension of time to deposit the arrears of rent. There was undoubtedly a delay in complying with the time schedule set out in the order dated 21.1.2004. However, in his considered exercise of his judicial discretion, the learned Trial Judge has extended the time and has set aside the earlier order striking off the defence of the Respondent. No interference under Article 227 of the Constitution is warranted. The Petition is accordingly dismissed.

2. In the event there is any further default on the part of the Respondent in complying with the order for payment of the monthly rent, it will be open to the Petitioners to move an appropriate application before the trial Court for further reliefs.

(DR. D. Y. CHANDRACHUD, J.)